

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
No. 5:19-cv-00316-D

BERKSHIRE LIFE INSURANCE
COMPANY OF AMERICA,

Plaintiff,

v.

AMRIKA RAMPERSAD,

Defendant.

**BERKSHIRE LIFE INSURANCE
COMPANY OF AMERICA'S
RESPONSE TO DEFENDANT'S RULE
56.1 STATEMENT**

Plaintiff Berkshire Life Insurance Company of America ("Berkshire"), through counsel and pursuant to Local Rule 56.1(a)(2), submits the following Response to Defendant Amrika Rampersad's Amended Rule 56.1 Statement [D.E. 40]:¹

1. Defendant applied for disability insurance coverage with Plaintiff on February 7, 2017. Exhibit A.

Response: Not disputed.

2. Plaintiff approved Defendant's coverage on April 19, 2017 and assigned policy number Z3585720. Exhibit B.

Response: Disputed. Berkshire's underwriting department approved an application from Dr. Rampersad for disability income insurance on or around April 18, 2017, subject to all requirements specified in the application and other policy documents. Not disputed that Berkshire notified Dr. Rampersad of the same on April 19, 2017, or that Berkshire assigned policy number Z3585720.

¹ Dr. Rampersad's Amended Rule 56.1 Statement includes two paragraphs labeled "6" and no paragraph labeled "3." This Response follows the numbering in Dr. Rampersad's Amended Rule 56.1 Statement.

4. Defendant signed the Policy Delivery Receipt, Declaration of Insurability, and Amendment to the Application for policy Z3585720 and returned them to Plaintiff on June 12, 2017. Exhibit C.

Response: Not disputed.

5. Defendant began paying premiums to Plaintiff on June 13, 2017. Exhibit D.

Response: Not disputed.

6. Defendant, by and through Plaintiff's agent, Matthew Fine, contacted Plaintiff on July 24, 2017 to about re-dating the policy in order to change the date the premiums were to be paid monthly. Exhibit E.

Response: Disputed. The July 24, 2017, communication was sent by Kelly Gatewood and did not ask about changing the date premiums were to be paid monthly, but rather asked if Berkshire would allow Dr. Rampersad to skip her next premium payment. [D.E. 41-05]

6. Plaintiff advised Defendant, by and through Matthew Fine, that the policy could be re-dated to June 13, 2017. Exhibit F.

Response: Disputed. Berkshire told Kelly Gatewood that Dr. Rampersad's "case" could be re-dated, not Policy No. Z3585720. [D.E. 41-07 at 4-5] Berkshire went on to explain that this process would require the issuance of a new policy and that Dr. Rampersad would have to sign new delivery requirements. [Id. at 2-3]

7. Plaintiff advised that June 13, 2017 was the true effective date of the policy. Id.

Response: Disputed. Berkshire told Kelly Gatewood that June 13, 2017, was the effective date of the Policy No. Z3585720. [See D.E. 41-05; D.E. 41-07 at 4-5] That policy is not at issue in this case. Berkshire never represented that June 13, 2017, was the effective date of Policy No. Z3724950, the policy that is at issue in this case.

8. Plaintiff advised that it a policy would be re-issued with a June 13, 2017 effective date, and that Defendant would need to re-sign policy deliveries. Exhibit G.

Response: Disputed. Berkshire told Kelly Gatewood that the requested change would require a “new policy number” and that Dr. Rampersad would have to sign delivery requirements for a new policy. [D.E. 41-07 at 2] Berkshire never stated that the new policy would have an effective date of June 13, 2017.

9. Defendant signed a Policy Delivery Receipt, Declaration of Insurability, and Amendment to the Application that were pre-dated for July 25, 2017. Exhibit H.

Response: Not disputed.

10. Plaintiff assigned policy number Z3724950. Id., Exhibit I.

Response: Not disputed.

11. Defendant filed a claim for disability benefits on September 21, 2018. Id., Exhibit J.

Response: Not disputed.

12. Plaintiff attempted to rescind the policy via a letter dated March 27, 2019. Id., Exhibit K.

Response: Undisputed that Berkshire sent Dr. Rampersad a letter on March 27, 2019 that rescinded Policy No. Z3724950. Disputed that Berkshire “attempted to rescind” that policy. Berkshire’s rescission was effective.

Respectfully submitted this the 25th day of September, 2020.

/s/ Ryan H. Niland

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